

Loan File Reunderwriting Protocol Status Report

Via ECF (S.D.N.Y. and C.D. Cal.) and Email (D. Kan.)

February 6, 2015

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

The Honorable John W. Lungstrum
The Honorable James P. O'Hara
United States District Court for the District of Kansas
500 State Avenue, Suite 517
Kansas City, KS 66101

The Honorable George H. Wu
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, CA 90012-4701

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.) and related actions

Dear Judges Cote, Lungstrum, Wu, and O'Hara:

Pursuant to § (g) of the Loan File Reunderwriting Protocol ("LFRP") (ECF No. 100) and the Courts' July 14, 2014 Order (ECF No. 174) and the Courts' December 12, 2014 Order (ECF No. 230),¹ the parties respectfully submit this status report "as to identification and production by Defendant Groups and third-parties of Loan Files and Guidelines for the Sampled Loans, and as to the status of above-described stipulations."

I. Collection of Loan Files and Guidelines

A. Defendants' Productions of Loan Files and Guidelines. Pursuant to §§ (b) and (c) of the LFRP, Defendants have identified the Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expected to produce to NCUA. Defendants in aggregate have sent approximately 200 notices to third parties seeking consent to re-produce Loan Files and Guidelines produced by third-parties in response to subpoenas in other RMBS actions. Defendants reasonably believe that they have produced all Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expect to produce to NCUA.²

B. NCUA's Subpoenas for Loan Files and Guidelines. NCUA has issued over 350 subpoenas to third-parties seeking Loan Files and Guidelines for the Sampled Loans. To

¹ Unless otherwise noted, ECF references are to *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.).

² Wachovia did not have any Loan Files for the Sampled Loans in its possession, custody, or control.

date, NCUA has collected loan file documents relating to approximately 24,870 of the 26,597 Sampled Loans at issue in these actions. NCUA has also collected thousands of potentially applicable underwriting guidelines. NCUA is processing, Bates stamping (if necessary), and reproducing these documents to Defendants. As of this report, NCUA has produced to Defendants all documents relating to loan files and underwriting guidelines that were produced by third parties on or before January 30, 2015, with the exception of one recent production that is still being processed. NCUA continues to meet-and-confer with numerous third-parties regarding outstanding loan files and underwriting guidelines.

NCUA expects to receive some of the missing loan files from the Residential Capital Liquidating Trust ("ResCap"). ResCap had previously informed the Courts that it expected to produce any Sampled Loans in its possession by January 30, 2015. *See* ECF No. 228. NCUA received ResCap productions of Sampled Loans on January 30, February 3, and February 5. NCUA is still cataloging the contents of ResCap's February 3 and February 5 productions, and the numbers in this report do not yet reflect any Sampled Loans produced by ResCap on those dates. If necessary, NCUA will promptly raise any issues with respect to ResCap's productions.

C. Defendants' Subpoena for Loan Files and Guidelines. RBS has issued one subpoena to a third-party seeking loan files. Other Defendants have not issued subpoenas seeking loan files or underwriting guidelines.

* * *

Appendix 1 provides the status of the parties' efforts to collect loan files for each action. Because the parties are attempting to determine the most appropriate Guidelines for the Sampled Loans through the stipulation process, the parties are currently unable to quantify the status of the collection of Guidelines applicable to the Sampled Loans.

II. Stipulations Regarding Loan Files and Guidelines

Pursuant to §§ (e) and (f) of the LFRP, NCUA has proposed loan file and guideline stipulations to Barclays, Nomura, RBS, Credit Suisse, Goldman Sachs, UBS, and Morgan Stanley, and Wachovia. Appendix 2 provides the status of these stipulations. The parties will cooperate in good faith regarding these stipulations and will raise any issues with the Court.

Respectfully submitted,

/s/ David C. Frederick

David C. Frederick

Wan J. Kim

Gregory G. Rapawy

Andrew C. Shen

KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.

Sumner Square

1615 M Street, N.W., Suite 400

Washington, D.C. 20036

Tel: (202) 326-7900

Fax: (202) 326-7999

dfrederick@khhte.com

wkim@khhte.com

grapawy@khhte.com

ashen@khhte.com

George A. Zelcs

KOREIN TILLERY LLC

205 North Michigan Avenue, Suite 1950

Chicago, IL 60601

Tel: (312) 641-9750

Fax: (312) 641-9751

gzels@koreintillery.com

Stephen M. Tillery

Greg G. Gutzler

Robert L. King

KOREIN TILLERY LLC

505 North Seventh Street, Suite 3600

St. Louis, MO 63101

Tel: (314) 241-4844

Fax: (314) 241-3525

stillery@koreintillery.com

ggutzler@koreintillery.com

rking@koreintillery.com

Erik Haas

Peter W. Tomlinson

Philip R. Forlenza

Henry J. Ricardo

PATTERSON BELKNAP WEBB & TYLER LLP

1133 Avenue of the Americas

New York, NY 10036

Tel: (212) 336-2000

Fax: (212) 336-2222

ehaas@pbwt.com

pwtomlinson@pbwt.com

prforlenza@pbwt.com

hjr Ricardo@pbwt.com

David H. Wollmuth

Frederick R. Kessler

Steven S. Fitzgerald

Ryan A. Kane

WOLLMUTH MAHER & DEUTSCH LLP

500 Fifth Avenue, 12th Floor

New York, NY 10110

Tel: (212) 382-3300

Fax: (212) 382-0050

dwollmuth@wmd-law.com

fkessler@wmd-law.com

sfitzgerald@wmd-law.com

rkane@wmd-law.com

Norman E. Siegel (D. Kan. # 70354)

Rachel E. Schwartz (Kan. # 21782)

STUEVE SIEGEL HANSON LLP

460 Nichols Road, Suite 200

Kansas City, MO 64112

Tel: (816) 714-7100

Fax: (816) 714-7101

siegel@stuevesiegel.com

schwartz@stuevesiegel.com

Attorneys for Plaintiff National Credit Union Administration Board

<p><u>/s/ Richard W. Clary</u> Richard W. Clary Julie A. North Richard J. Stark Michael T. Reynolds Lauren A. Moskowitz CRAVATH, SWAINE & MOORE LLP 825 Eighth Avenue New York, NY 10019 Tel: (212) 474-1000 Fax: (212) 474-3700 rclary@cravath.com jnorth@cravath.com rstark@cravath.com mreynolds@cravath.com lmoskowitz@cravath.com</p> <p><i>Attorneys for Defendants Credit Suisse Securities (USA) LLC and Credit Suisse First Boston Mortgage Securities Corp.</i></p>	<p><u>/s/ James P. Rouhandeh</u> James P. Rouhandeh Paul S. Mishkin Daniel J. Schwartz Joanna Geneve-Third DAVIS POLK & WARDWELL LLP 450 Lexington Avenue New York, NY 10017 Telephone: (212) 450-4000 Facsimile: (212) 701-5800 rouhandeh@davispolk.com paul.mishkin@davispolk.com daniel.schwartz@davispolk.com joanna.geneve-third@davispolk.com</p> <p><i>Attorneys for Defendants Morgan Stanley & Co., Inc. n/k/a Morgan Stanley & Co. LLC, and Morgan Stanley Capital I Inc.</i></p>
<p><u>/s/ Jeffrey T. Scott</u> David H. Braff Jeffrey T. Scott Joshua Fritsch SULLIVAN & CROMWELL LLP 125 Broad Street New York, NY 10004 Tel: (212) 558-4000 Fax: (212) 558-3588 braffd@sullcrom.com scottj@sullcrom.com fritschj@sullcrom.com</p> <p><i>Attorneys for Defendant Barclays Capital Inc.</i></p>	<p><u>/s/ Scott D. Musoff</u> Jay B. Kasner Scott D. Musoff Gary J. Hacker SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP Four Times Square New York, NY 10036 Tel: (212) 735-3000 Fax: (212) 735-2000 jay.kasner@skadden.com scott.musoff@skadden.com gary.hacker@skadden.com</p> <p><i>Attorneys for Defendant UBS Securities, LLC</i></p>

<p><u>/s/ R. Alexander Pilmer</u> R. Alexander Pilmer, CA Bar No. 166196 David I. Horowitz, CA Bar No. 248414 KIRKLAND & ELLIS LLP 333 South Hope Street Los Angeles, CA 90071 Telephone: (213) 680-8400 Facsimile: (213) 680-8500 alexander.pilmer@kirkland.com david.horowitz@kirkland.com</p> <p><i>Attorneys for Defendants RBS Securities Inc., f/k/a Greenwich Capital Markets, Inc. and RBS Acceptance Inc., f/k/a Greenwich Capital Acceptance Inc.</i></p>	<p><u>/s/ David H. Fry</u> David H. Fry Christian K. Wrede Hannah Shearer MUNGER TOLLES & OLSON LLP 560 Mission Street 27th Floor San Francisco, CA 94105 Telephone: (415) 512-4000 Facsimile: (415) 512-4077 david.fry@mto.com christian.wrede@mto.com hannah.shearer@mto.com</p> <p>Andrew W. Goldwater FRIEDMAN KAPLAN SEILER & ADELMAN LLP 7 Times Square New York, NY 10036 Telephone: (212) 833-1100 Facsimile: (212) 833-1250 agoldwater@fklaw.com</p> <p><i>Attorneys for Defendant Wachovia Capital Markets, LLC, n/k/a Wells Fargo Securities, LLC</i></p>
<p><u>/s/ Richard H. Klapper</u> Richard H. Klapper William B. Monahan Peter A. Steciuk Mark S. Geiger SULLIVAN & CROMWELL LLP 125 Broad Street New York, NY 10004 Tel: (212) 558-4000 Fax: (212) 558-3588 klapperr@sullcrom.com monahanw@sullcrom.com steciukp@sullcrom.com geigerm@sullcrom.com</p> <p><i>Attorneys for Defendants Goldman, Sachs & Co. and GS Mortgage Securities Corp.</i></p>	<p><u>/s/ Barbara S. Steiner</u> Barbara S. Steiner Matthew J. Thomas JENNER & BLOCK LLP 353 N. Clark St. Chicago, IL 60654 Tel: (312) 222-9350 Fax: (312) 527-0484 bsteiner@jenner.com mthomas@jenner.com</p> <p><i>Attorneys for Nomura Home Equity Loan, Inc. and Nomura Asset Acceptance Corp.</i></p>

/s/ William F. Alderman

William F. Alderman
ORRICK, HERRINGTON & SUTCLIFFE
LLP

The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Tel: (415) 773-5700
Fax: (415) 773-5759
walderman@orrick.com

*Attorney for Defendant NovaStar Mortgage
Funding Corporation*

cc: Counsel of Record (via ECF or Email)

Re: *NCUA v. RBS & Wachovia*, Nos. 11-2340 & 11-2649
NCUA v. Credit Suisse Securities (USA) LLC, No. 12-2648
NCUA v. UBS Securities, LLC, No. 12-2591
NCUA v. Morgan Stanley & Co., No. 13-2418

Re: *NCUA v. Goldman, Sachs & Co.*, No. 11-6521
NCUA v. RBS Securities, LLC, No. 11-5887

Appendix 1

Defendant Group	Sampled Loans as to Which Defendants Produced Loan Files	Sampled Loans as to Which NCUA Collected Loan Files from Third-Parties ¹	Sampled Loans as to Which Loan Files Have Been Produced by Any Party or Third-Party	Total Number of Sampled Loans	Percentage of Sampled Loans Collected	Potential Custodians for Missing Loan Files (Bold indicates a third-party that has been subpoenaed by NCUA) ²
Barclays	398	1659	1799	1800	99.9%	Wells Fargo Bank, N.A.
Credit Suisse	1000	1839	2741	3000	91%	Aurora Loan Services, LLC; JPMorgan Chase Bank, N.A.; Nationstar Mortgage, LLC; ResCap Liquidating Trust
Goldman Sachs	422	2687	2894	3000	97%	First Banc Mortgage, Corp.; ResCap Liquidating Trust
Morgan Stanley	1429	3729	4622	5197	89%	1st Advantage Mortgage, LLC; 1st Republic Mortgage; Amera Mortgage Corporation; Arlington Capital Mortgage; BM Real Estate Services, Inc.; C&F Mortgage Corporation; Consumer Home Mortgage Corporation of America, Inc.; Cornerstone Mortgage, Inc.; DAS Acquisition Co. LLC d/b/a USA Mortgage; Decision One Mortgage Company, LLC ; Evergreen Moneysource Mortgage; First United Bank and Trust Company; Greenlight Financial Services ; Groves Funding; Ideal Mortgage Bankers, Ltd. ; Leader Mortgage Company, Inc.; Liberty Financial Group, Inc.; MLD Mortgage, Inc.; Mortgage Capital Associates, Inc.; NV Mortgage Finance, Inc.; PHM Financial Inc.; PointBank, N.A.; Radius Financial Group, Inc.; ResCap Liquidating Trust ; Southern Trust Mortgage, LLC; Stearns Lending, Inc. ; The Washington Savings Bank; W.R. Starkey Mortgage; Willow Bend Mortgage

¹ Numbers reported in this column and the other columns incorporating data about the production of loan files in response to NCUA's subpoenas to third parties are as represented by NCUA.

² Certain entities disclosed by Defendants to NCUA as potential custodians of outstanding Loan Files or Guidelines are omitted from this column based on NCUA's understanding that such entities do not in fact have relevant documents relating to the missing Loan Files.

Defendant Group	Sampled Loans as to Which Defendants Produced Loan Files	Sampled Loans as to Which NCUA Collected Loan Files from Third-Parties ¹	Sampled Loans as to Which Loan Files Have Been Produced by Any Party or Third-Party	Total Number of Sampled Loans	Percentage of Sampled Loans Collected	Potential Custodians for Missing Loan Files (Bold indicates a third-party that has been subpoenaed by NCUA) ²
Nomura	595	0	595	600	99%	Mutual of Omaha Bank; NovaStar; Ocwen Loan Servicing, LLC; Wells Fargo Bank, N.A
Novastar	62	229	283	400	71%	NovaStar; Ocwen Loan Servicing, LLC; Saxon Mortgage Services, Inc.
RBS	1329	7810	8405	8800	96%	Ameriquist Mortgage Co.; BankUnited, N.A.; Brooks America Mortgage Corp.; BSM Financial LP; Cenlar, FSB; Central Mortgage Company; First Federal; GMAC Mortgage Comp; Homecomings Financial; FDIC as Receiver for IndyMac Bank, F.S.B; INMC; Green Tree Servicing LLC; JPMorgan Chase Bank, N.A; Just Mortgage, Inc.; LBMC; Lending First Mortgage LLC; Loan Center of California, Inc.; Loan Link Financial Services; Mortgage Store; Mutual of Omaha Bank; Nationstar Mortgage LLC; NetBank; NovaStar; Ocwen Loan Servicing, LLC; Paul Financial, LLC; Plaza Home Mortgage, Inc.; Residential Capital, LLC; Pro30Funding; Residential Funding Company, LLC; RPM; Secured Bankers Mortgage Company; Saxon Mortgage Services, Inc.; Select Portfolio Servicing; Silver State Financial Services, Inc., d/b/a Silver State Mortgage; Specialized Loan Servicing; Washington Mutual Mortgage Securities Corp.; Wells Fargo Bank, N.A.; Wells Fargo Bank, N.A (Virtual Bank)
UBS	447	3938	4214	4600	92%	Aurora Loan Services, LLC; ResCap Liquidating Trust
Wachovia	0	678	678	800	85%	American Mortgage Network, Inc.; NovaStar; Ocwen Loan Servicing; Saxon Mortgage Services, Inc.; Wells Fargo Bank, N.A

Appendix 2

Defendant Group	Number of Stipulations Proposed by NCUA	Number of Stipulation Responses by Defendant	Number of Stipulations Proposed by NCUA for Which a Response Has Been Due	Number of Loan File Stipulations Reached	Number of Sampled Loans for Which Defendant Proposed A Loan File Stipulation, But No Stipulation Yet Reached	Number of Stipulations Reached as to Guideline and Matrix	Number of Sampled Loans for Which Defendant Proposed A Guideline or Matrix Stipulation, But No Stipulation Yet Reached	Total Number of Sampled Loans	Percentage of Sampled Loans With Loan File Stipulations	Percentage of Sampled Loans With Stipulations as to Guideline and Matrix
Barclays	797	597	597	441	88	240	351	1800	24.5%	13.3%
Credit Suisse	1594	1592	1592	1573	0	879	201	3000	52.4%	29.3%
Goldman Sachs	1799	1799	1799	1551	0	1488	208	3000	51.7%	49.6%
Morgan Stanley	946	717	717	600	117	517	200	5197	11.5%	10.0%
Nomura	194	0	0	0	0	0	0	600	0%	0%
Novastar	0	0	0	0	0	0	0	400	0%	0%
RBS	2938	2023	2023	1663	44	1044	900	8800	18.9%	11.9%
UBS	2163	2163	2163	2040	116	712	962	4600	44.3%	15.5%
Wachovia	97	0	0	0	0	0	0	800	0%	0%